

## History/Summary of Electronic Gaming Operations

- In 1993 video gaming machines were made legal by the NC General Assembly. Citizen disenchantment led to the same machines being banned in NC in 2006 with all machines being phased out by July 1, 2007 (G.S. 14-306.1A).
- A successor to the video poker machine was developed to operate the same games-of-chance but as a "sweepstakes" game instead. As a sweepstakes, the machines were considered legal because they were covered under the same provisions designed to allow the lottery and other on-line sweepstakes.
- To operate as a sweepstakes, individuals have to purchase some other commodity (most commonly internet time or a pre-paid long distance calling card) and are allowed to play a game as a premium to the purchase
- The winners are pre-determined and only revealed through the game - the purchaser can skip over the game play and just go straight to the counter to find out if they are a winner or not. Because of this, attorneys for the gaming companies have argued that the machines don't have games-of-chance but that they simulate a game of chance to reveal a prize.
- August 1, 2007 letter by the N.C. Attorney General's office written to the Davidson County Sheriff's office concluded the devices were illegal. In that opinion, Assistant Attorney General Adinolfi states that "Holding the sweepstakes out as free of charge (and appending a phone card to the scheme) is a transparent effort to dodge the strictures of the General Statutes ban on slot machines and video gaming machines."
- (Some) Law enforcement continued to enforce and confiscate machines until they were sued.
- In March 2008, Guilford County Superior Court Judge John O. Craig, III, ruled that G.S. 14-306.1A did not apply to these sweepstakes systems that were beginning to be used throughout the state.
- In April of that year, the NC House tried to respond to this loophole but the initial attempt got bogged down because of the inability to ban the electronic gaming machines without also banning the on-line sweepstakes made popular by national food chains (McDonald's, Pepsi Co., etc.) and the lottery.
- Eventually the NC General Assembly passed some new legislation (G.S. 14-306.3) effective Dec. 1<sup>st</sup>, 2008 that banned "server-based electronic games", including sweepstakes games played with prepaid cards. According to the law, in order to be classified as a "server-based electronic game promotions" it must meet four criteria:
  - 1) A database contains a pool of entries with each entry associated with a prize value
  - 2) Participants purchase or obtain a prepaid card
  - 3) With each prepaid card the participant also receives one or more entries in a sweepstakes
  - 4) Entries are revealed either at the time of purchase or at a terminal with a display similar to a slot machine.

- After this law went into effect, operators adapted their machines and business practice to sell PIN numbers instead of pre-paid cards feeling that this would exempt them from the previous law.
- Guilford County Superior Court Judge John Craig ruled that the new style of play was outside the reach of the statute because it involved neither a database that contains “pools of entries with each entry associated with a prize value” (G.S. 14-306.3(c)(1)), nor entries that are “revealed” at a point-of-sale terminal or at a game terminal (G.S. 14-306.3(c)(4)). He consequently issued a preliminary injunction against State of North Carolina law-enforcement personnel preventing them from taking criminal action under the new law against those with reconfigured gaming operations.
- Judge Craig was also quoted as saying that he questioned whether the legality of such machines should be decided by the courts and that it “ultimately becomes a legislative issue”.
- Other court rulings in favor of the gaming machines were also referenced but not specifically cited.
- On a related matter, Wake County Superior Court judge, Howard Manning, Jr., handed down a ruling (stayed pending appeal) that G.S. 14-306.3 (the same server-based electronic gaming statute) was unconstitutional as a violation of equal protection because it generally prohibited various forms of electronic gaming statewide while allowing the Eastern Band of Cherokee Indians to operate these same games.
- The Court of Appeals (Judges Geer, Hunter, and Stephens) considered this matter and ruled in December 2009 that it was legal (and not unconstitutional) to restrict gaming operations to the Eastern Band of Cherokee Indians. It does not appear that this decision affects the question of whether server-based or sweepstakes machines fall under the state law prohibition.
- Bills that would have created a fully legal space for the games, as well as measures to outlaw them entirely, were filed in 2009 but neither camp gained any traction before lawmakers adjourned in August.
- Most law enforcement officials appear to be waiting for a definitive appellate court ruling or action by the legislature before attempting any enforcement.
- The appellate court decisions are likely to take some time and it seems unlikely that the Legislature will do anything significant on this topic during the 2010 short session. As a result, it appears that a number of municipalities are turning to zoning land use controls to at least help control the proliferation of these establishments. There are several news article references to the courts and appellate courts upholding the legality of separation requirements for these electronic gaming devices.
- Most land use controls appear to be in the form of a Conditional Use Permit, or similar; however, there are also examples of nuisance or police ordinances.
- The most common conditions include:
  - 1) Separation requirements from other gaming establishments, churches, schools, places of worship, day care centers, public or private elementary or secondary schools, public parks or playgrounds, public libraries,

cemeteries (?), skating rinks, recreational ball fields, video arcades, or motion picture theaters which show G or PG rated films to the general public on a regular basis, tattoo and body piercing parlors, and adult and sexually oriented businesses.

- 2) Hours of operation
  - 3) Maximum number of machines (seems like the state already limits this to 4)
  - 4) Minimum age to enter (I think this is also established by the state, same as the lottery – 18 years?)
- The use will also need to be defined and listed as a CU in certain zoning districts in addition to being expressly prohibited in others.
  - A typical definition may read something like:

***Electronic Gaming Operation*** means a business enterprise, whether principal or accessory, where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, including sweepstakes and where cash, merchandise, or other items of value are redeemed or otherwise distributed, whether or not value of such distribution is determined by electronic games played or be predetermined odds. This term includes, but is not limited to internet cafes, internet sweepstakes, beach sweepstakes or cybercafés. Electronic Gaming Operations do not include operations associated with the official NC State Education Lottery.

- To play,
  - 1) Individuals go to a counter and pay a sum which is then entered by the clerk and assigned to a particular machine. There are usually several games to choose from (e.g. Keno, Black Jack, Slots, etc.)
  - 2) Money is deducted from the original sum with each play
  - 3) A PIN number is provided to the customer (but we are unclear as to how it works or why it is needed).
  - 4) The machine indicates whether you are a winner or not and you may continue to play or you may “redeem” your “prize” at the counter. Most payouts are small but the larger payouts are often distributed over several days.
- There were several news reports that the results of the machines being easily rigged to allow a true game-of-chance and to minimize payouts, etc.
- There are a number of reports of other associated crimes such as illegal sale of drugs, drunken & disorderly conduct, fights, car break-ins, prostitution, etc.